

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAVID PETERSEN,)	
)	
Plaintiff,)	4:08CV3178
)	
v.)	
)	
MICHAEL J. ASTRUE, Commissioner of)	MEMORANDUM AND ORDER ON
Social Security,)	PLAINTIFF'S APPLICATION FOR
)	ATTORNEY FEES UNDER THE EQUAL
Defendant.)	ACCESS TO JUSTICE ACT
_____)	

On June 16, 2009, the plaintiff filed an application for attorney fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. (See filing 32.) The application will be denied without prejudice.

A party seeking fees pursuant to the EAJA must submit an application “within thirty days of final judgment in the action.” 28 U.S.C. § 2412(d)(1)(B). The term “final judgment” is defined as “a judgment that is final and not appealable.” 28 U.S.C. § 2412(d)(2)(G). Because the February 23, 2009, judgment has been appealed to the Eighth Circuit Court of Appeals, (see filing 30), and because that appeal is pending, the judgment is not “final.” I find, therefore, that the plaintiff’s June 16 application for attorney fees was filed prematurely.

IT IS ORDERED that the plaintiff’s application for attorney fees under the Equal Access to Justice Act, filing 32, is denied without prejudice.

Dated July 6, 2009.

BY THE COURT

s/ Warren K. Urbom
United States Senior District Judge